

IN THE  
COURT OF SPECIAL APPEALS OF MARYLAND

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SEPTEMBER TERM, 2020

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NO. 590

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BIOSEY LEVERN NEAL,  
Appellant,

v.

STATE OF MARYLAND,  
Appellee.

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APPEAL FROM THE CIRCUIT COURT  
FOR BALTIMORE CITY

(Hon. W. Michel Pierson, Motions Judge)

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BRIEF OF APPELLEE

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## STATEMENT OF THE CASE

In March 2009, Neal entered guilty pleas in three cases. See Docket Entries, *State of Maryland v. Boisey Levern Neal*, Circuit Court for Baltimore City, Case Nos. 207255049 (armed robbery), 2017255050 (use of a handgun in the commission of a crime of violence), and 207255051 (armed robbery). For his crimes, and in accordance with his plea agreement, he was sentenced to 10 years on each of the armed robbery counts and 5 years without parole on the handgun count, all to be served concurrently with each other, but consecutive to any time that he was already serving.<sup>1</sup>

In 2018, Neal filed an federal habeas corpus petition to resolve the ambiguity in his sentence — whether he was to serve it consecutive to the Anne Arundel County sentence and the Baltimore County sentence or only the Anne Arundel County sentence; he dismissed the petition in 2019. *See Boisey Levern*

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<sup>1</sup> When he was sentenced, Neal was serving a 10-year sentence for a 2008 conviction he received for armed robbery in Anne Arundel County and a 2 year sentence for a 2006 violation of probation for an armed robbery conviction that he received in Baltimore County. *See* Docket Entries, *State of Maryland v. Boisey Levern Neal*, Circuit Court for Anne Arundel, Case No. 02-K-07-001393; Docket Entries, *State of Maryland v. Boisey Levern Neal*, Circuit Court for Baltimore County, Case No. 03-K-95-001261.

*Neal v. Warden Richard Dovey, et al*, United States District Court for the District of Maryland, Civil Action No. 18-3022PX.

In December 2019, pursuant to a State filed motion to correct an illegal sentence, Neal was resentenced. At that hearing, according to the docket entries and the commitment records appended to Neal's brief, he received 10 years on each of the armed robbery convictions and 5 years (without parole) on the handgun conviction. The sentences were concurrent to each other, but consecutive to the 2008 Anne Arundel County sentence.

According to Neal, although not reflected in the docket entries, after he was resentenced in 2019, he filed a motion to correct an illegal sentence, which the circuit court, (J. Pierson, presiding), denied on July 20, 2020. On August 14, 2020, Neal filed an application for leave to appeal from the court's order denying his motion. This Court has treated Neal's application as a notice of appeal.

On November 30, 2020, Neal filed an Informal Brief of Appellant in this Court. According to the Certificate of Service, the brief was not served on the State. Neal's appeal is scheduled to be heard by the Court during its March 2021 argument session.

## QUESTION PRESENTED

If addressed, did the circuit court properly deny Neal's motion to correct an illegal sentence?

## STATEMENT OF FACTS

For the purpose of this appeal, the State incorporates the Statement of the Case set forth above and the facts as proffered by the State in support of Neal's convictions, at his March 10, 2009 plea hearing. (T. 3/10/09 at 20-21, 22-23).

## ARGUMENT

IF ADDRESSED, THE CIRCUIT COURT PROPERLY DENIED NEAL'S MOTION TO CORRECT AN ILLEGAL SENTENCE.

According to Neal, the circuit court erred in denying his motion to correct an illegal sentence because he did not receive the appropriate credit for time served on his 2009 sentences when he was resentenced on December 12, 2019. For two reasons, the Court should affirm the circuit court's ruling denying Neal's motion to correct his sentence.

First, the record in this case does not include a transcript of the December 2019 hearing and the hand-written docket entries

appended to Neal's application for leave to appeal and the commitment records amended to his brief do not reflect a start date for Neal's 2009 Baltimore City sentences.<sup>2</sup> Consequently, to the extent that Neal complains he was not awarded any credit or awarded sufficient credit when he was sentenced in 2019, the Court cannot resolve that issue on this record. *See* Maryland Rule 8-501(c) ("The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal."); *DiMeglio v. State*, 201 Md. App. 287, 314-15 (2011) (declining to consider issue because transcript of hearing was not provided); *Miles v. State*, 88 Md. App. 248, 255 n. 2 (1991) ("Previously, we

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<sup>2</sup> The Maryland Case Search docket entries for the Baltimore City Circuit Court Case Nos. 207255050 and 207255051 show a sentence start date of June 14, 2007. Even that appears incorrect, however, if the sentences were concurrent to each other but consecutive to the 2008 Anne Arundel County sentence.

Neal's 2008 Anne Arundel County sentence was imposed in March 2008. He received 20 years (suspend all but 10) for armed robbery, and 10 years (suspend all but 5) (consecutive; no parole) for use of a handgun in the commission of a crime of violence. *See* MDEC Record, *State of Maryland v. Boisey Levern Neal*, Circuit Court for Anne Arundel County, 02-K-07-001393. The start date for the sentence was determined to be June 14, 2007.

have ruled that it is the party's responsibility to see to it that the appeal record is complete."); *Mora v. State*, 355 Md. 639, 650 (1999) (stating that "[i]t is incumbent upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed"). *See also* Md. Rules 8-413 & 8-414. The Court, therefore, should decline to address Neal's appellate claim of error and it should affirm the ruling below.

Regardless, even if addressed, Neal is not entitled to any appellate relief in this case. The subject matter of his motion to correct — the awarding of credit for the time already served on his Baltimore City sentence, *but see* fn. 3, *supra*, and for the time he spent in pre-trial detention in North Carolina — is not the proper subject of a Motion to Correct an Illegal Sentence. *See Bratt v. State*, 468 Md. 481, 499-500 (2020) (holding that "the allegation that Petitioner was entitled to credit for time served, and that the trial judge failed to award credit when he issued the corresponding commitment record, is a defect in sentencing procedure that does not render the sentence itself inherently illegal . . . . [and] [b]ecause the 'terms of the sentence itself [were not] legally or



constitutionally invalid in any other respect[,]' the sentence imposed was not inherently illegal and Rule 4-345 was not an appropriate mechanism for challenging the failure to award credit for time served").

Given the nature of Neal's complaints, therefore, the circuit court properly denied his motion. Accordingly, if the Court addresses the merits of Neal's challenge to the circuit court's ruling denying his motion, it Court should affirm that ruling.

### CONCLUSION

The State respectfully asks the Court to affirm the judgment of the Circuit Court for Baltimore City.

Dated: February 3, 2021

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

The State does not request oral argument.

CERTIFICATION OF WORD COUNT AND  
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 1,134 words, excluding the parts exempted from the word count by Maryland Rule 8-503.

/s/ Cathleen C. Brockmeyer  
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Counsel for Appellee

BIOSEY LEVERN NEAL,	IN THE
Appellant,	COURT OF SPECIAL APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2020
Appellee.	No. 590

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### CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, February 3, 2021, I electronically filed the foregoing “Brief of Appellee” using the MDEC System, which sent electronic notification of filing to all persons entitled to service, and mailed three copies first-class, postage prepaid to Boisey Levern Neal #349-871, Dorsey Run Correctional Facility, 2020 Toulson Road, Jessup, MD 20794

/s/ Cathleen C. Brockmeyer

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